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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,430	03/06/2006	Rolf-Reiner Sawall	235838	3178
23460	7590	04/14/2008	EXAMINER	
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6731			GUADALUPE, YARITZA	
ART UNIT	PAPER NUMBER			
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04/14/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/538,430	SAWALL ET AL.
	<b>Examiner</b> YARITZA GUADALUPE-MCCALL	<b>Art Unit</b> 2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 10 June 2005.
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 22-52 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 22-28,31,32,38-42 and 45-51 is/are rejected.
- 7)  Claim(s) 29,30,33-37,43,44 and 52 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 10 June 2005 is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some \* c)  None of:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/26/2007
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date, \_\_\_\_\_.
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22 – 25, 31 – 32, 38 - 39 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Clemens et al. ( US 3,992,936 ).

With respect to claim 22, Clemens et al. discloses a hand held yarn measuring device comprising a housing ( 14 ) having a handle ( 18 ) with an actuating member ( 44 ), a yarn catcher ( 24 ) supported by the housing ( 14 ) for movement between a first tuck position and a second measuring position ( See Figures 2, 5 and 6 ), an actuating mechanism ( 42, 50 ) connecting said actuating member ( 44 ) to said yarn catcher ( 24 ), a yarn guide element ( 58 ) disposed at a location between said two yarn catcher positions and a yarn tension indicator ( 58 ), as this element also includes an electronic measuring circuitry, col. 3, lines 41 – 49 ) disposed at a point between the yarn catcher measuring position and the yam guide element.

In regards to claim 23, Clemens et al. further teaches a yarn measuring device in which said yarn catcher ( 24 ) includes a pivotably supported lever ( 26 ) having a yam guide element (36) at a free end of said lever ( 26 ).

Regarding claim 24, Clemens et al. also shows a yarn measuring device in which said yam guide element ( 58 ) is a rotatably supported yam spool.

With regards to claim 25, Clemens et al. discloses a yarn measuring device including a stop member ( rack and pinion mechanism, 40 and 42, which prevents from further rotation ) for defining the yam catcher measuring position ( Figures 5 and 6 ).

Regarding claim 31, Clemens et al. teaches a yarn measuring device in which said yam tension indicator ( 58 ) is connected to a processing device ( as inherently suggested by the presence of an electronic measuring circuitry, columns 3 and 4, lines 41 – 49 and 4 – 7 respectively ).

With respect to claim 32, Clemens et al. shows a yarn measuring device in which said processing device is connected to a display device ( See Column 3, lines 45 – 49 ).

In regards to claim 38, Clemens et al. further teaches a yarn measuring device in which said housing ( 10 ) has two elongated legs ( 14, 18 ) that form an obtuse angle with one another.

Regarding claim 39, Clemens et al. discloses a yarn measuring device in which said yarn catcher ( 24 ) is supported by a free end of one of said legs ( 14 ) and the other leg ( 18 ) serves as said handle.

With regards to claim 45, Clemens et al. teaches a hand held yarn measuring device comprising a housing ( 14, 18 ) having a handle ( 18 ) with a selectively actuatable actuating member ( 44 ), a yarn guide ( 58 ) rotatably supported by said housing, a pivot lever ( 26 ) mounted for pivotable movement about the rotary axis of said yarn guide element, an actuating mechanism ( 42, 50 ) connecting said actuating member to said pivot lever, said pivot lever ( 26 ) having a yarn guide spool ( 36 ) at a free end thereof for positioning into contacting relation with a moving yarn, a tension indicator ( 58 ) supported by said housing, and said actuating member being actuatable to cause said actuating mechanism ( 42, 50 ) to pivot said pivot lever to a position that causes said moving yarn to simultaneously engage said yarn guide element and said tension indicator.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 40 – 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemens et al. (US 3,992,936 ).

Clemens et al. discloses a yarn measuring device as stated in paragraph 2 above.

Clemens et al. does not disclose the battery compartments as stated in claims 40 and 41.

In regards to claims 40 and 41: Official notice is taken with respect to the batter compartment and battery included in the handle since it is very well known in the art to use that in order for an electronic measuring circuitry ( as taught by Clemens et al. in column 3, lines 41 – 49 ) to operate, a power source must be provided as part of the circuitry of the device. Thus, to include a battery to the handle of the device disclosed by Clemens et al. would have been obvious to a person having ordinary skill in the art at the time the invention was made since the device will be inoperative in the absence of a power source or an alternate source of energy.

Furthermore, to include a battery compartment to the handle of the device disclosed by Clemens et al. would have been obvious to a person having ordinary skill in the art at the time the invention was made since the electronic circuitry and battery may need replacement and it is well known to provide an access to do so.

With respect to claim 42, Clemens et al. teaches a yarn measuring device in which said actuating member ( 44 ) is moveable between an actuating position and an unactuated position,

and said actuating mechanism ( 42, 50 ) positively engages and secures said actuating member when in said unactuated position.

5. Claims 26 – 28 and 46 – 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemens et al. ( US 3,992,936 ) in view of Kothmeier ( US 5,725,174 ).

Clemens et al. discloses a yarn measuring device as stated in paragraph 2 above.

Clemens et al. does not disclose the sensor as stated in claims 26 and 46, said sensor being a rotary position sensor as stated in claims 27 and 47, or an rpm sensor as stated in claims 28 and 48. Clemens et al. does not disclose a first yarn guide indicator and a second yarn indicator as stated in claim 49.

With respect to claims 26 – 27 and 46 - 47: Clemens et al. discloses a yarn measuring device in which said yam guide element ( 58 ) is a rotatably supported yarn spool, and said yarn spool is connected to an electronic measuring circuitry ( See Columns 3 and 4, lines 41 – 49 and 4 – 7 respectively ), but fails to specify the use of a particular sensor. Kothmeier discloses an apparatus for measuring a yarn, said apparatus comprising a rotary sensor ( 40 ) connected to a yarn spool (29) in order to detect the position and speed of the yarn guide element ( See Column 4, lines 3 - 5 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the electronic measuring circuitry disclosed by

Clemens et al. by providing a rotary position sensor as taught by Kothmeier in order to increase the accuracy of the measurements by detecting position and speed ( See Column 4, lines 3 – 5 ).

Regarding claims 28 and 48: the combination of Clemens et al. and Kothmeier as stated above, disclose the use of a rotary position sensor as part of the measuring circuitry. The use of the particular type of sensor claimed by applicant, i.e., rpm sensor, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as a means is provided for measuring parameters of the yarn spool, as already suggested by Clemens et al. and Kothmeier, 2) the sensor claimed by Applicant and the rotary position sensor used by Clemens et al. and Kothmeier are well known alternate types of sensors which will perform the same function, if one is replaced with the other, of measuring parameters from the yarn spool, and 3) the use of the particular type of sensor by Applicant is considered to be nothing more than the use of one of numerous and well known alternate types of sensors that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to provide a means for measuring yarn spool parameters as already suggested by Clemens et al. and Kothmeier.

In regards to claim 49, the combination of Clemens et al. and Kothmeier disclose a hand held yarn measuring device comprising a housing ( 14, 18 ) having a handle ( 18 ) with a selectively actuatable actuating member ( 44 ), a yarn catcher ( 24 ) supported by said housing for movement between a first position that permits contact with moving yarn and a second

measuring position, an actuating mechanism ( 42, 50 ) connecting said actuating member to said yarn catcher , a first yarn guide indicator ( 40 as modified with Kothmeier above ) for measuring the speed of said moving yarn, a second yarn indicator ( 58 ) for measuring the tension of the moving yarn, and said yarn catcher being moveable from said first position to said second position in response to actuation of said actuating member for causing said moving yarn to simultaneously engage said first and second indicators.

With regards to claim 50, the combination of Clemens et al. and Kothmeier also teach a yarn measuring device in which said yarn tension indicator ( 58 ) is connected to a processing device ( as inherently suggested by the presence of an electronic measuring circuitry, columns 3 and 4, lines 41 – 49 and 4 – 7 respectively ).

Regarding claim 51, the combination of Clemens et al. and Kothmeier further shows a yarn measuring device in which said processing device is connected to a display device on said housing ( See Column 3 of Clemens et al., lines 45 – 49 ).

*Allowable Subject Matter*

6. Claims 29 – 30, 33 – 37, 43 – 44 and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Lawson ( US 4,092,857 )
- b. Robinson ( US 3,962,730 )
- c. Saunders ( US 4,245,512 )

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to YARITZA GUADALUPE-MCCALL whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-1984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YGM  
April 10, 2008

/YARITZA GUADALUPE-MCCALL/  
Primary Examiner, Art Unit 2841